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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

REALTIME DATA, LLC D/B/A/ IXO
 	
    Plaintiff,
 	
    vs.
 	
APPLE, INC.,
 	
    Defendant.
	Case No. 16-cv-02595-JD
	
	STIPULATED [PROPOSED] ESI
	
	ORDER

Plaintiff Realtime Data, LLC d/b/a IXO ("Plaintiff") and Defendant Apple Inc. ("Defendant") anticipate that Electronically Stored Information ("ESI") is likely to be collected and produced during the course of discovery in this case and request that the Court enter this Order setting forth the conditions for requesting and producing such information.

1   Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good

2 cause for the following Stipulated ESI Order ("Order" or "ESI Order").

3 **1.   PURPOSE**

4   (a)   This Order supplements all other discovery rules and orders. It streamlines ESI

5 production to promote a "just, speedy, and inexpensive determination" of this action, as required

6 by Federal Rule of Civil Procedure 1.

7   (b)   This Order may be modified in the Court's discretion or by stipulation.

8   (c)   As in all cases, costs may be shifted for disproportionate ESI production requests

9 pursuant to Federal Rule of Civil Procedure 26. Likewise, a party's nonresponsive or dilatory

10 discovery tactics are cost-shifting considerations.

11   (d)   A party's meaningful compliance with this Order and efforts to promote efficiency

12 and reduce costs will be considered in cost-shifting determinations.

13   (e)   The parties are expected to comply with the District's E-Discovery Guidelines

14 ("Guidelines") and are encouraged to employ the District's Model Stipulated Order Re: the

15 Discovery of Electronically Stored Information and Checklist for Rule 26(f) Meet and Confer

16 regarding Electronically Stored Information.

17 **2.   CUSTODIAN ESI**

18   (a)   General ESI production requests under Federal Rules of Civil Procedure 34 and 45

19 shall not include electronic files, email, or other forms of electronic correspondence residing on

20 personal computers, network resources, and other electronic devices for a specific custodian's use

21 for work purposes (collectively "Custodian ESI"). Custodian ESI does not include information

22 stored on shared drives, files, repositories or other such shared electronic management and storage

23 tools. To obtain Custodian ESI parties must propound specific production requests.

24   (b)   Custodian ESI production requests shall only be propounded for specific issues,

25 rather than general discovery of a product or business.

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(c)   Custodian ESI production requests shall be phased to occur after the parties have exchanged initial disclosures, infringement contentions and accompanying documents pursuant to Patent Local Rule 3-1 and 3-2, and invalidity contentions and accompanying documents pursuant to Patent Local Rule 3-3 and 3-4.

(d)   Custodian ESI production requests shall identify the custodian, search terms, and time frame. The parties shall cooperate to identify the proper custodians, proper search terms and proper timeframe as set forth in the Guidelines.

(e)   The parties shall meet and confer to reach agreement on a reasonable list of custodians for purposes of collection, review and production of electronically stored information, which shall consist of no more than a total of five (5) custodians per producing party. The parties may jointly agree to modify this limit without the Court's leave. In connection with the meet and confer process, each party shall provide a proposed list of individual custodians who are knowledgeable about and were involved with the core issues or subjects in this case (e.g., the asserted patents, the development, design and operation of the accused products, and sales, marketing and other damages-related information for the accused products).

(f)   The parties then shall meet and confer to reach agreement on search terms to be used for electronic searches of the files from those custodians, which shall be limited to no more than a total of eight (8) search terms per custodian per party. The parties may jointly agree to modify this limit without the Court's leave. The search terms shall be narrowly tailored to particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production

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1   and shall be considered when determining whether to shift costs for disproportionate discovery.

2   Should a party serve Custodian ESI production requests with search terms beyond the limits agreed

3   to by the parties or granted by the Court pursuant to this paragraph, this shall be considered in

4   determining whether any party shall bear all reasonable costs caused by such additional discovery.

5   The parties may jointly agree to modify this limit without the Court's leave.

6   (g)   Notwithstanding prior agreement on the search terms to be used for electronic

7   searches, should a search produce an unreasonably large number of non-responsive or irrelevant

8   results, the parties shall (at the producing party's request) meet and confer to discuss application

9   of further negative search restrictions (e.g., if a single search was for "card" and ninety percent of

10 the resulting documents came from the irrelevant term "credit card," a negative limitation to ignore

11 documents only returned as a result of "credit card" may be applied to remove these documents).

12 The party receiving production shall not unreasonably oppose such further restrictions designed to

13 filter immaterial search results.

14   (h)   The parties will exchange privilege logs in accordance with the Court's orders.

15 **3.   PRODUCTION FORMAT AND LIMITATIONS**

16   (a)   <u>Format for production of documents existing in electronic format</u>.   Except as

17 otherwise provided for in this Stipulation, all documents existing in electronic format shall be

18 produced in either multiple page, searchable PDF format or TIFF format.

19   (b)   For productions in PDF format:

20   (i)   documents shall be produced in multiple page, searchable PDF format at a

21   resolution of at least 300 dpi with document level text files and a

22   Concordance. DAT load file;

23   (ii)   the producing party shall make reasonable efforts to convert to searchable

24   PDF.

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(c)   For productions in TIFF format:

(i)   documents shall be produced in single page, 300 dpi (minimum) Group IV TIF images in accordance with the following:

(ii)   the extracted text for each document shall be provided as document level text files. The file name shall match the BEGDOC identifier for that specific record and be accompanied by the .txt extension;

(iii)   images without extracted text will be OCR'd;

(iv)   an Opticon .OPT load file will be provided which references the images;

(v)   a Concordance .DAT file with metadata field delimiters will be provided as described in 3(d) below and with references to the document level files; and

(d)   Each image shall contain a footer with a sequentially ascending production number (otherwise known as a "bates stamp").

(e)   Metadata.   Load files should include, where applicable, the information listed in the Table of Metadata Fields, attached as Exhibit A. However, the parties are not obligated to include metadata for any document that does not contain such metadata in the original, if it is not possible to automate the creation of metadata when the document is collected. The parties reserve their rights to object to any request for the creation of metadata for documents that do not contain metadata in the original.

(f)   Production media and encryption of productions.   Unless otherwise agreed, the parties shall provide document productions in the following manner: The producing party shall provide the production data on CDs, DVDs, external hard drives or SFTP, as appropriate. The producing party shall encrypt the production data using WinRAR encryption, and the producing party shall forward the password to decrypt the production data separately from the CD, DVD, external drive or SFTP to which the production data is saved.

(g)   Format for production of documents existing in hardcopy or paper. All documents that are hardcopy or paper files shall be scanned and produced in the same manner as documents existing in electronic format, above.

(h)   Source code. This Stipulation does not govern the format for production of source code, which shall be produced pursuant to the relevant provision of the Protective Order.

(i)   Parent and child emails. The parties shall produce email attachments sequentially after the parent email.

(j)   Native files. The parties will meet and confer to discuss requests for the production of files in native format, on a case-by-case basis. If the parties are unable to reach agreement with regard to requests for additional documents in native-file format, the parties reserve the right to seek relief from the Court. Documents produced natively shall be represented in the set of imaged documents by a slipsheet indicating that the document is being produced natively, the production identification number and the confidentiality designation for the native file that is being produced.

(k)   Databases. Certain types of databases are dynamic in nature and will often contain information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Thus, a party may opt to produce relevant and responsive information from databases in an alternate form, such as a report or data table. These reports or data tables will be produced in a static format. The parties agree to identify the specific databases, by name, that contain the relevant and responsive information that parties produce.

(l)   Requests for hi-resolution or color documents. The parties agree to respond to reasonable and specific requests for the production of higher resolution or color images. Nothing in this Stipulation shall preclude a producing party from objecting to such requests as unreasonable in number, timing or scope, provided that a producing party shall not object if the document as originally produced is illegible or difficult to read. The producing party shall have the option of responding by producing a native-file version of the document. If a dispute arises with regard to

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1   requests for higher resolution or color images, the parties will meet and confer in good faith to try

2   to resolve it.

3   (m)   Foreign language documents. All documents shall be produced in their original

4   language. Where a requested document exists in a foreign language and the producing party also

5   has an English-language version of that document that it prepared for non-litigation purposes prior

6   to filing of the lawsuit, the producing party shall produce both the original document and all

7   English-language versions. In addition, if the producing party has a certified translation of a

8   foreign-language document that is being produced, (whether or not the translation is prepared for

9   purposes of litigation) the producing party shall produce both the original document and the

10   certified translation. Nothing in this agreement shall require a producing party to prepare a

11   translation, certified or otherwise, for foreign language documents that are produced in discovery.

12   (n)   No Backup Restoration Required. Absent a showing of good cause, no party need

13   restore any form of media upon which backup data is maintained in the party's normal processes,

14   including but not limited to backup tapes, disks, SAN, and other such forms of media, to comply

15   with its discovery obligations in this case.

16   (o)   Sources Not Reasonably Accessible. Absent a showing of good cause, backup data

17   and media, voicemails, PDAs, mobile phones, instant messages, messages on social media sites

18   (i.e., Facebook, Twitter, etc.), data stored on photocopiers, scanners, and fax machines, server,

19   system or network logs are deemed not reasonably accessible and need not be collected and

20   preserved. Nothing in this Order will prevent a party from asserting objections to the production

21   of additional categories of information as not reasonably accessible.

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1   **IT IS SO STIPULATED**, through Counsel of Record.

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     Dated: September 8, 2016   _/s/ R. William Sigler_
3   Counsel for Plaintiff

4   Dated: _/s/ Michael A. Bittner_
                                        Counsel for Defendant
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6   **ATTESTATION:** Pursuant to Local Rule 5-1(i)(3) I hereby attest that concurrence in the filing

7   of this document has been obtained from Michael Bittner.

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9   By: _/s/ R. William Sigler_
                                            R. William Sigler
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12   **IT IS ORDERED** that the forgoing Agreement is approved.

13   Dated:

14   UNITED STATES DISTRICT JUDGE

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EXHIBIT A

TABLE OF METADATA FIELDS

Field Name	Specifications Field Name	Field Type	Description (Email)	Description (E-Files/Attachments)
BegDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the first page of an email.	The Document ID number associated with the first page of a document
EndDoc	Unique ID (Bates number)	Paragraph	The Document ID number associated with the last page of an email.	The Document ID number associated with the last page of a document.
BegAttach	Unique ID (Bates number) Parent-Child Relationships	Paragraph	The Document ID number associated with the first page of a parent email.	The Document ID number associated with the first page of a parent document.
EndAttach	Unique ID (Bates number) Parent-Child Relationship	Paragraph	The Document ID number associated with the last page of the last attachment to a parent email.	The Document ID number associated with the last page of the last attachment to a parent document.
Pages	Pages	Number	The number of pages for an email.	The number of pages for a document.
DateSent		Date (MM/DD/YYYY format)	The date the email was sent.	For email attachments, the date the parent email was sent.

Author	Author Display Name (e-mail)	Paragraph	The display name of the author or sender of an email.	The name of the author as identified by the metadata of the document.
To	Recipient	Paragraph	The display name of the recipient(s) of an email.	The display name of the recipient(s) of a document (e.g., fax recipients).
CC	CC	Paragraph	The display name of the copyee(s) of a email.	
BCC	BCC	Paragraph	The display name of the blind copyee(s) of an email.	
Subject	Subject (e-mail)	Paragraph	The subject line of an email.	The subject of a document from entered metadata.
Custodian	Custodian	Paragraph	The custodian of an email.	The custodian of a document.